

IN THE MATTER OF THE ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR)	
SERVICES,)	
)	
Union,)	INTEREST ARBITRATION
)	AWARD
and)	
)	
DAKOTA COUNTY,)	
)	
Employer.)	BMS Case No. 13-PN-0284
)	

Arbitrator: Stephen F. Befort

Hearing Date: May 2, 2013

Post-hearing Briefs submitted: May 17, 2013

Date of Decision: June 4, 2013

Appearances:

For the Union: Kevin McGrath

For the County: Frank J. Madden

INTRODUCTION

This is an interest arbitration proceeding arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01 - 179A.30. Law Enforcement Labor Services ("Union") is the exclusive representative of a unit of deputy sheriffs employed in the Dakota County Sheriff's Department ("County"). The unit consists of approximately 55 employees.

The parties previously negotiated a collective bargaining agreement for calendar year

2011. The Union and the County have engaged in negotiations for a successor agreement, but they have been unable to reach an agreement. The Bureau of Mediation Services (“BMS”) certified the unresolved issues for interest arbitration:

DISCUSSION AND AWARD

INTEREST ARBITRATION PRINCIPLES

1. **Replicate Voluntary Agreement.** The central goal of interest arbitration is to ascertain the agreement that the parties themselves would have reached if they had continued bargaining and concluded a voluntarily negotiated settlement. *See AFSCME Council 65 and County of Carver*, BMS Case No. 10-PN-423 (Fogelberg, 2011).

2. **Criteria for Determination.** In general, arbitrators consider the following factors in determining interest arbitration awards: the employer’s ability to pay and other economic considerations, relevant internal comparisons, and relevant external comparisons. Since the adoption of the Minnesota Pay Equity Act, Minn. Stat. Sec. 471.991 - 471.999, the principal, but not exclusive, factor relied upon by most Minnesota interest arbitrators in deciding issues of wages, benefits, and other terms and conditions of employment has been internal consistency with the settlements negotiated with respect to the other bargaining units in the same jurisdiction. *See e.g., Law Enforcement Labor Services, Inc. and McLeod County*, BMS Case No. 03-PN-613 (Kircher, 2003); *Law Enforcement Labor Services, Inc. and Chisago County*, BMS Case No. 95-PN-54 (Berquist, 1995).

3. **Burden on Proponent for Change.** As a general proposition, an interest arbitrator should not alter longstanding contractual arrangements in the absence of a compelling reason to do so. Accordingly, most interest arbitrators will place the burden on the party proposing a change in the parties’ relationship to demonstrate the need for such change by clear and

compelling evidence. *See* Human Services Supervisors Association and County of Dakota, BMS Case No. 97-PN-837 (Wallin, 1997).

POSITIONS OF THE PARTIES

UNION:

Wages: 2.0% general wage increase for 2012 and a one-time wage increase of 5.0% at the control point of the salary range; and 2.0% general wage increase for 2013.

Merit Matrix: for 2012 and 2013:

Role Model performance rating	4%
Achiever performance rating	3%
Contributor performance rating	2%
Learner/Corrective performance rating	0%

COUNTY:

Wages: 0.0% general wage increase for 2012, and 1.0% general wage increase for 2013.

Merit Matrix:

No merit increase for 2012.

For 2013:

Role Model performance rating	1% base + 1% lump sum + \$500 lump sum
Achiever performance rating	1% base + 1% lump sum
Contributor performance rating	.5% base + 1% lump sum
Learner/Corrective performance rating	0%

Union Arguments

The Union contends that the County has the ability to pay the requested salary adjustments based upon recent budget surpluses, the size of the County's reserve fund, and the improving economy. The Union claims that the County's general fund balance at the end of 2011 was more than 73% of general fund expenditures, which far exceeds the State Auditor's recommendation of a fund balance in the range of 35 to 50% of annual expenditures. The Union

points out that Dakota County has the lowest taxes per capita in the seven-county metropolitan area while Brandt Richardson is the highest paid county administrator in that same area. The Union also cites to the Consumer Price Index for Minneapolis and St. Paul which increased by 4% in 2011 and 2.6% in 2012.

In terms of external comparisons, the Union contends that the appropriate comparator group consists of the seven metropolitan counties in the Twin cities area (Hennepin, Ramsey, Anoka, Carver, Scott, Washington, and Dakota). The Union maintains that the external comparison picture is “blurry” due to the fact that the County’s unilateral control over pay ranges has significantly delayed the progress of unit employees through the applicable salary range. As a result, the Union asserts that many unit employees will not reach the maximum of the salary range within 20 years of employment while the average years to maximum for employees in the county comparison group is ten years. In addition, the Union claims that most patrol officers employed by municipal police departments in Dakota County reach the top of their pay range after only 36 months.

The Union claims that no internal pattern of wage settlement has been established for County employees. In this regard, the Union argues that the County has destroyed any internal pattern by combining the health insurance benefit with wages in an attempt to force the acceptance of a health plan with considerably less coverage. In particular, the County has deviated from its past practice of providing merit pay based on performance and substituted a practice of providing merit increases only to those units that have accepted inferior health care coverage. As a result, some units have received merit increases while others have not. In addition, the Union maintains that the assistant county attorney unit received a five percent wage increase for 2012 as a market-based adjustment and that the deputy sheriffs should be entitled to

the same benefit. The Union additionally argues that the County's argument in favor of an internal pattern should be rejected for the reason that giving primacy to internal consistency in all instances essentially would eliminate the duty to bargain.

Employer Arguments

The County asserts that both the general economy and public sector budgets continue to be stressed and likely will remain in that condition for the foreseeable future. The County contends that the combination of new service obligations and a decline in state aid has weakened the ability of the County to assume greater personnel costs. The County also argues that unreserved fund balances are designated for various future expenditures and should not be used for ongoing expenditures, such as wages.

As for external comparators, the County agrees that the seven-county metropolitan area constitutes the appropriate comparison group. The County points out that most of the counties in this group settled for a 0% general wage adjustment for 2012 and for 1% or less for 2013. The County also asserts that unit pay under its proposal would exceed the average minimum and maximum pay provided to deputies by the comparator counties.

The County urges that the determinative factor relied on by most Minnesota interest arbitrators with respect to wages is internal consistency. The County maintains that it has implemented two alternative internal models for County employees. For those units agreeing to adopt the lower cost base medical plan (Dakota Advantage), employees received a 1.5% merit increase plus a \$1,000 lump sum payment for 2012 and a 2% general wage increase plus a merit increase of up to 1% plus a lump sum payment for 2013. As a second pattern, those units not accepting the lower cost health insurance plan received no general or merit increase for 2012 and a lower 1% general wage increase plus merit adjustment for 2013. Since the Union has not

accepted the lower cost medical plan for the deputies unit, the County argues that internal consistency supports the adoption of the lower wage adjustment pattern for this group.

C. Analysis

Economic Considerations

PELRA mandates that arbitrators in interest arbitration proceedings consider the “obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.” Minn. Stat. § 179A.16, subd. 7. In this instance, the Union is correct in contending that the County has the ability to fund the Union’s wage proposal and that the economy is starting to improve. Nonetheless, the current economic recovery is weak, and local government finances remain in a precarious position. Local government units typically experience a time lag in rebounding from a period of recession, and budgetary projections for the next few years still show deficits, including a projected \$627 million shortfall at the state level for the 2014-2015 biennium. And, while Dakota County currently has a healthy general fund balance, most Minnesota arbitrators agree that a general fund balance, as one-time money, “should not be used to justify expenditures for wages, which have an ongoing nature.” Law Enforcement Labor Services and City of New Hope, BMS Case No. 12-PN-0656 (Gallagher, 2012). Under these circumstances, a cautious approach to personnel costs is warranted.

External Comparisons

Both parties agree that the appropriate external comparison group consists of the other counties in the seven-county Twin Cities metropolitan area. The external comparison data submitted by the County shows that the County’s final position on wages would leave unit employees \$4,916/year above the average starting wage for the comparison group. The data also

shows that the County's wage position is \$3, 320 above the average maximum end of the salary range even after considering the effect of longevity pay (Dakota County does not provide longevity pay). A similar gap exists for 2013. Union exhibits also show that unit pay is more than \$300/month above the average county comparison group.

The Union's counter-argument is that the County's unilateral control over pay ranges has resulted in a situation where it takes unit employees considerably longer to reach the maximum of their salary schedule as compared to deputies in the comparable county group. The Union claims this delay is even more pronounced when compared to patrol officers in the various Dakota County municipal police departments who typically reach the top end of their salary schedules after 36 months.

On the whole, the external comparison data generally supports the County's position, although the Union's argument concerning movement through the salary schedule is not without some merit.

Internal Comparisons

Most Minnesota arbitrators view internal consistency as the most important consideration in determining wage adjustments. This view dominates for two principal reasons. First, an award consistent with an existing internal wage pattern most often replicates the bargain that the parties would have struck through a voluntarily negotiated agreement. Second, an award that deviates from an internal pattern is likely to set off an undesirable ripple effect in future rounds of bargaining.

The Union contends that no internal pattern has been established for Dakota County employees during this round of bargaining. The Union points to the disparate settlements reached for various county units and the lack of a consistent approach to merit compensation.

Arbitrator John Johnson rejected this line of argument in a May 17, 2013 interest arbitration award for the Dakota County LELS Licensed Supervisors unit. Arbitrator Johnson explained his reasoning as follows:

. . . Beginning with the year 2011, two distinct wage/benefit packages began to be implemented, as described above, depending on which insurance plan the bargaining unit chose. Although there are two patterns beginning in 2011, consistency is being maintained.

Based on the above, there is a sufficient pattern of consistency over time and into the present that in order for the award with respect to the LELS Licensed Supervisors Unit to vary from that pattern, there needs to be some compelling reason.

County of Dakota and Law Enforcement Labor Services, BMS Case No. 13-PN-0089 (Johnson, 2013). Finding no compelling reason to deviate from the internal pattern, Arbitrator Johnson awarded the same County position as sought in this proceeding.

The record supports Arbitrator Johnson's conclusion of a consistent two-part internal pattern. In 2012, for those units agreeing to adopt the lower cost base medical plan, which includes the Human Services Supervisors Association, the Minnesota Nurses Association, the Community Corrections Association, and the Attorney Employees Association, employees received a 1.5% merit increase plus a \$1,000 lump sum payment for 2012 and (except for the attorney unit which has not yet reached a settlement for 2013) a 2% general wage increase plus a merit increase of up to 1% plus a lump sum payment for 2013. Non-union employees received this same package pursuant to County Board policy. Meanwhile, as a second pattern, those units not accepting the lower cost health insurance plan, which includes those represented by AFSCME Local 306 and the LELS Licensed Supervisors, received no general or merit increase for 2012 and a lower 1% general wage increase plus merit adjustment for 2013. If this pattern were to be extended to the deputy sheriff unit, those employees also would receive the lower pay adjustments since LELS has not agreed to the lower cost Dakota Advantage health plan.

The Union also seeks a one-time wage increase of 5% for those unit employees who are not at the maximum point of the salary range. This request is premised upon a comparison to the assistant county attorney unit which received a somewhat similar adjustment for 2012. The Union elicited testimony from Jennifer Jackson, President of the Attorney Employees Association. In her testimony, she described the 5% increase provided in a Memorandum of Understanding (MOU) as a market-based adjustment designed to correct for the lower salaries paid to employees in the attorney unit.

The County's evidence, however, paints a different picture. Employee Relations Director Nancy Hohbach testified that the adjustment provided to the attorney unit was not market-based, but rather was a change to make up for a historical error in the treatment of promotions in the attorney unit. Ms. Hohbach explained that most county employees, including those in the deputy sheriff unit, receive a 5% wage increase upon a promotion in classification. The County discovered, however, that attorneys promoted from the Attorney III to the Attorney IV classification had not received this promotional increase. The MOU, accordingly, provided a 5% pay adjustment to the attorneys who had been promoted to the Attorney IV class without receiving a promotional increase. Ms. Hohbach stressed that this was a policy correction rather than a negotiated market-based increase since the pay increase was not provided to those employees in the attorney unit who have not yet not progressed to the Attorney IV level.

On the whole, internal comparisons provide strong support for the County's position. This support is buttressed by the fact that all County employees have received identical wage adjustments for every year since 2000.

D. Award: The County's position on wages and merit pay is awarded:

Wages: 0.0% general wage increase for 2012, and 1.0% general wage increase for 2013.

Merit Matrix:

No merit increase for 2012.

For 2013:

Role Model performance rating	1% base + 1% lump sum + \$500 lump sum
Achiever performance rating	1% base + 1% lump sum
Contributor performance rating	.5% base + 1% lump sum
Learner/Corrective performance rating	0%

Dated: June 4, 2013

Stephen F. Befort
Arbitrator